



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 29, 1994

Mr. Randall C. Mack  
Assistant Chief of Police  
Bellaire Police Department  
5110 Jessamine  
Bellaire, Texas 77401-4495

OR94-505

Dear Mr. Mack:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 24501.

The Bellaire Police Department (the "department") has received a request from an unsuccessful job applicant for the department's file on his application. You have submitted a 24-page document for our review. You are concerned that some of the information the department obtained in investigating the applicant's background may be private. We assume you intend to raise section 552.101 of the act.<sup>2</sup>

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

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<sup>1</sup>We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

<sup>2</sup>The department has not raised section 552.108, the law enforcement exception.

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. article 6252-17a, section 3(a)(1)). Generally, information about the job performance of a public employee or the reasons for a public employee's demotion, dismissal, or resignation is of legitimate public interest. Open Records Decision Nos. 444 (1986); 329 (1982); 278 (1981).

You assert that information regarding the applicant's resignation from another police department is private and therefore not subject to required public disclosure. We disagree. First, the applicant was a public employee and this information is therefore of legitimate public interest. Furthermore, even if this information were arguably private information about the applicant, the requestor would have a special right of access to this information. See Gov't Code § 552.023. Finally, the references' statements do not relate to their private affairs, but rather to the affairs of their public office. Therefore, the statements do not implicate the references' privacy interests. Thus, we conclude that the information you have marked is not confidential and must be released.

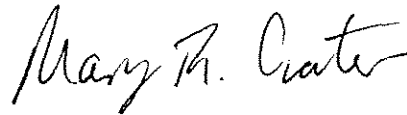
The information submitted to us for review includes criminal history information about third parties, *i.e.* the applicant's family members and his fiancée. Some of this information appears to have been generated by the Texas Crime Information Center ("TCIC"). Some of this information appears to have been derived from the National Crime Information Center ("NCIC"). Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. See Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency, such as the department, to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1).

For the foregoing reasons, we conclude that any criminal history record information data regarding third parties that was generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. See Open Records Decision No. 565. Furthermore, any criminal history record information received from DPS must be withheld under section 552.101 of

the Government Code in conjunction with Government Code chapter 411, subchapter F. Finally, we note that NCIC information regarding the requestor, which we have marked, cannot be released to him. *See id.* at 12 (NCIC information cannot be released to the subject of the information).

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Mary R. Crouter".

Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/MAR/rho

Ref.: ID# 24501

Enclosures: Marked documents

cc: Mr. Don L. Frisch  
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(w/o enclosures)